

determination contract for construction:

(A) Differing site conditions encountered upon commencement of construction activities that impact health or safety concerns or shall require an increase in the negotiated project budget;

(B) The Secretary discovers materially non-compliant work;

(C) Funds allocated for the project that is the subject of this contract are rescinded by Congressional action; or

(D) Other Congressional actions occur that materially affect the subject matter of the contract.

(ii) If the Secretary wishes to suspend the work, the Secretary shall first provide written notice and an opportunity for the Indian tribe or tribal organization to correct the problem. The Secretary may direct the Indian tribe or tribal organization to suspend temporarily work under a contract only after providing a minimum of 5 working days' advance written notice to the Indian tribe or tribal organization describing the nature of the performance deficiencies or imminent safety, health or environmental issues which are the cause for suspending the work.

(iii) The Indian tribe or tribal organization shall be compensated for reasonable costs, including but not limited to overhead costs, incurred due to any suspension of work that occurred through no fault of the Indian tribe or tribal organization.

(iv) Disputes arising as a result of a suspension of the work by the Secretary shall be subject to the Contract Disputes Act or any other alternative dispute resolution mechanism as negotiated between and agreed to by the parties and contained in the contract.

(12) The Secretary can terminate the project for cause in the event non-compliant work is not corrected through the suspension process specified in paragraph (11) of this section.

(13) The Secretary retains authority to terminate the project for convenience for the following reasons:

(i) Termination for convenience is requested by the Indian tribe or tribal organization;

(ii) Termination for convenience is requested by the Secretary and agreed

to by the Indian tribe or tribal organization;

(iii) Funds allocated for the project that is the subject of the contract are rescinded by Congressional action;

(iv) Other Congressional actions take place that affect the subject matter of the contract;

(v) If the Secretary terminates a self-determination construction contract for convenience, the Secretary shall provide the Indian tribe or tribal organization 21 days advance written notice of intent to terminate a contract for convenience; or

(vi) The Indian tribe or tribal organization shall be compensated for reasonable costs incurred due to termination of the contract.

§ 900.132 Once a contract and/or grant is awarded, how will the Indian tribe or tribal organization receive payments?

(a) A schedule for advance payments shall be developed based on progress, need, and other considerations in accordance with applicable law. The payment schedule shall be negotiated by the parties and included in the contract. The payment schedule may be adjusted as negotiated by the parties during the course of the project based on progress and need.

(b) Payments shall be made to the Indian tribe or tribal organization according to the payment schedule contained in the contract. If the contract does not provide for the length of each allocation period, the Secretary shall make payments to the Indian tribe or tribal organization at least quarterly. Each allocation shall be adequate to provide funds for the contract activities anticipated to be conducted during the allocation period, except that:

(1) The first allocation may be greater than subsequent allocations and include mobilization costs, and contingency funds described in § 900.128(e)(8); and

(2) Any allocation may include funds for payment for materials that will be used during subsequent allocation periods.

(c) The Indian tribe or tribal organization may propose a schedule of payment amounts measured by time or

measured by phase of the project (e.g., planning, design, construction).

(d) The amount of each payment allocation shall be stated in the Indian tribe or tribal organization's contract proposal. Upon award of the contract, the Secretary shall transfer the amount of the first allocation to the Indian tribe or tribal organization within 21 days after the date of contract award. The second allocation shall be made not later than 7 days before the end of the first allocation period.

(e) Not later than 7 days before the end of each subsequent allocation period after the second allocation, the Secretary shall transfer to the Indian tribe or tribal organization the amount for the next allocation period, unless the Indian tribe or tribal organization is delinquent in submission of allocation period progress reports and financial reports or the Secretary takes action to suspend or terminate the contract in accordance with § 900.131(b)(11), § 900.131(b)(12), or § 900.131(b)(13).

§ 900.133 Does the declination process or the Contract Dispute Act apply to construction contract amendments proposed either by an Indian tribe or tribal organization or the Secretary?

The Contract Disputes Act generally applies to such amendments. However, the declination process and the procedures in § 900.122 and § 900.123 apply to the proposal by an Indian tribe or tribal organization when the proposal is for a new project, a new phase or discreet stage of a phase of a project, or an expansion of a project resulting from an additional allocation of funds by the Secretary under § 900.120.

§ 900.134 At the end of a self-determination construction contract, what happens to savings on a cost-reimbursement contract?

The savings shall be used by the Indian tribe or tribal organization to provide additional services or benefits under the contract. Unexpended contingency funds obligated to the contract, and remaining at the end of the contract, are savings. No further approval or justifying documentation by the Indian tribe or tribal organization

shall be required before expenditure of funds.

§ 900.135 May the time frames for action set out in this subpart be reduced?

Yes. The time frames in this subpart are intended to be maximum times and may be reduced based on urgency and need, by agreement of the parties. If the Indian tribe or tribal organization requests reduced time frames for action due to unusual or special conditions (such as limited construction periods), the Secretary shall make a good faith effort to accommodate the requested time frames.

§ 900.136 Do tribal employment rights ordinances apply to construction contracts and subcontracts?

Yes. Tribal employment rights ordinances do apply to construction contracts and subcontracts pursuant to section 7(b) and section 7(c) of the Act.

§ 900.137 Do all provisions of the other subparts apply to contracts awarded under this subpart?

Yes, except as otherwise provided in this subpart and unless excluded as follows: programmatic reports and data requirements, reassumption, contract review and approval process, contract proposal contents, and § 900.150 (d) and (e) of these regulations.

Subpart K—Waiver Procedures

§ 900.140 Can any provision of the regulations under this part be waived?

Yes. Upon the request of an Indian tribe or tribal organization, the Secretary shall waive any provision of these regulations, including any cost principles adopted by the regulations under this part, if the Secretary finds that granting the waiver is either in the best interest of the Indians served by the contract, or is consistent with the policies of the Act and is not contrary to statutory law.

§ 900.141 How does an Indian tribe or tribal organization get a waiver?

To obtain a waiver, an Indian tribe or tribal organization shall submit a written request to the Secretary identifying the regulation to be waived and